STATE OF MICHIGAN

COURT OF APPEALS

ATWA ELMORSY and SHADYA ELMORSY, Plaintiffs-Appellants, v GLEN JAY BOVEN, Defendant-Appellee.	UNPUBLISHED February 17, 2004 No. 244532 Kent Circuit Court LC No. 00-005761-NI

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs were injured when the vehicle in which they were riding was struck by a vehicle driven by non-participating defendant Robert Scribner. The vehicle driven by Scribner was owned by defendant, who purchased it for use by his daughter, Danielle Boven. On the day of the accident, Danielle gave Cory Finney permission to drive the vehicle. The accident occurred when Scribner used the vehicle to pick up friends for a gathering at Finney's residence.

Plaintiffs filed suit seeking to hold defendant liable under the owner's liability statute, MCL 257.401(1). The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), finding that no evidence showed that Scribner operated the vehicle with the express or implied permission of either defendant or Danielle.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

MCL 257.401(1) provides that the owner of a motor vehicle is liable for an injury caused by the negligent operation of the vehicle if the vehicle was being operated with his or her express or implied consent. "The operation of a motor vehicle by a person who is not a member of the family of the owner gives rise to a rebuttable common-law presumption that the operator was driving the vehicle with the express or implied consent of the owner." *Fout v Dietz*, 401 Mich 403, 405; 258 NW2d 53 (1977) (footnote omitted). This presumption of consent is not unlimited and can be overcome with strong and credible evidence that the operator was driving the vehicle

without the express or implied consent of the owner. See *Bieszck v Avis Rent-A-Car System, Inc*, 459 Mich 9, 18; 583 NW2d 691 (1998).

We affirm. Plaintiffs' contention that any attempt by a vehicle's owner to place limitations on its use by another is ineffective is contrary to the holding in *Bieszck, supra*, that the presumption of consent can be rebutted. Plaintiffs' reliance on *Cowan v Strecker*, 394 Mich 110; 229 NW2d 302 (1975), is misplaced. In that case, the operator was driving the vehicle with the consent of the owner's permitee. Here, no evidence showed that Danielle gave Scribner permission to drive the vehicle. The presumption of consent is deemed rebutted under such circumstances. See *Caradonna v Arpino*, 177 Mich App 486, 490; 442 NW2d 702 (1989). The presumption of consent was rebutted by defendant's uncontradicted testimony that Danielle was the only person who had permission to drive the vehicle, and by the uncontradicted testimony that Danielle did not give Scribner permission to drive the vehicle. *Bieszck, supra*.

Affirmed.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens